IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

FRIDAY, THE TWENTY FOURTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT
THE HON'BLE SRI DEVINDER GUPTA, THE CHIEF JUSTICE
and
THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT APPEAL Nos. 1456 AND 1459 of 2004

WRIT APPEAL No. 1456 OF 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 27/08/2004 in WP No. 14181 OF 2004 on the file of the High Court.)

Between:
R. Jayalakshmamma, Hindu, W/o P. Ramakrishna,
R/o Marrimakulapalle, Kagathi Post, Chowdepalli Mandal, Chittoor District.

..... APPELLANT

AND

1.The Election Tribunal -cum- Senior Civil Judge, Punganoor, Chittoor District.
2. M. Chandravadana, Hindu, W/o M. Venkataramana Raju,
R/o Balasamudram Village, Pandillapalli, Chowdepalle Mandal, Chittoor District.
3. N. Jothi, Hindu, W/o Rathnappa,
R/o Chowdepalli Village, Post and Mandal, Chittoor District.
4. The Election Officer -cum- Chief Executive Officer, Zilla Parishad, Chittoor.
5.The Election Officer, Chowdepalle Mandal, Chittoor District.

.....RESPONDENTS

Counsel for the Appellant: Mr.K.Subrahmanya Reddy
Senior Advocate,
for Mr. C.Ramachandra Reddy

Counsel for Respondent No.1: Smt.M.Bhaskara Lakshmi

Counsel for Respondent No.2: Mr.Ramesh Ranganadhan
for Mr. V.Surender Reddy
Counsel for Respondent No.3: Mr.A.K.Narasimha Rao
Counsel for Respondents 4 &5: Mr.Srinivas Dammalapati.

WRIT APPEAL NO : 1459 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 27/08/2004 in WP No. 14461 OF 2004 on the file of the High Court.)

Between:
R. Jayalakshmamma, Hindu, W/o P. Ramakrishna,
R/o Marrimakulapalle, Kagathi Post, Chowdepalli Mandal, Chittoor District.

..... APPELLANT

AND

1.The Election Tribunal-cum-Senior Civil Judge, Punganoor, Chittoor District.
2. N. Jothi, Hindu, W/o Rathanappa,
R/o Chowdepalli Village Post & Mandal, Chittoor District.
3. M. Chandravadana, Hindu, W/o M. Venkataramana Raju,
R/o Balasdamudram Village, Chowdepalli Mandal, Chittoor District.
4.The Election Officer-cum-Chief Executive Officer, Zilla Parishad, Chittoor.
5.The Election Officer, Chowdepalle Mandal, Chittoor District.

.....RESPONDENTS

Counsel for the Appellant: Mr.K.Subrahmanya Reddy
Senior Advocate
for Mr.C.Ramachandra Reddy.

Counsel for Respondent No.1: Smt.M.Bhaskara Lakshmi
Counsel for Respondent No.2: Mr.A.K.Narasimha Rao
Counsel for Respondent No.3: Mr.Ramesh Ranganadhan
for Mr.V.Surender Reddy
Counsel for Respondents 4 & 5: Mr.Srinivas Dammalapati

The Court made the following :

ORAL COMMON JUDGMENT:
(per The Honourable Sri Devinder Gupta, the Chief Justice)

These two Writ Appeals have been filed by the elected candidate to the Office of Zilla Parishad Territorial Constitutency Member of Chowdepalle Mandal.

Two other contesting candidates questioned the election of the appellant by filing two Election Petitions on the ground that the appellant was disqualified for election under sub-Section (3) of Section 19 of the Andhra Pradesh Panchayat Raj Act, 1994 (for short "the Act") for having more than two children. The allegation was that third child was born on 8.7.1995. Since the birth of third child had taken place after one year from the date of the commencement of the Act, appellant was precluded from contesting as a candidate. The appellant contested the petitions on the ground that the third child was born on 16.3.1995 and since the birth of third child was within one year from the date of commencement of the Act, by virtue of the first proviso to sub-section (3) of Section 19 of the Act, the appellant had not incurred any disqualification. The Election Tribunal allowed both the petitions holding that the third child was born on 8.7.1995 and the plea of the appellant that third child was born on 16.3.1995 was false and was based upon concocted evidence. Therefore, it was held that the appellant could not have contested the election. Out of the two candidates, the second respondent had, in the Election Petition, prayed for his being declared as elected. But, such a prayer was not

made by the third respondent in the Election Petition. In view of Rule 15 of the Andhra Pradesh Panchayat Raj (Election Tribunals in respect of Gram Panchayats, Mandal Parishads and Zilla Parishads) Rules, 1995 (hereinafter referred to as "the Rules"), the Election Tribunal declared the second respondent as elected candidate of the ZPTC, Chowdepalle after setting aside the election of the appellant. Feeling aggrieved, appellant preferred two Writ Petitions. Both the Writ Petitions were heard together and dismissed by the learned Single Judge, by common order dated: 27.8.2004. In the Writ Petitions, before the learned Single Judge, appellant questioned the findings of the Tribunal as regards the date of birth of the third child as also the order declaring Respondent No.2 as bad in law being contrary to the ratio laid down by the Supreme Court in **Prakash Khandre v. Dr.Vijay Kumar Khandre**[1]**.**

Learned Single Judge re-appreciated the entire evidence in the light of the submissions made by the learned counsel for the appellant and found that the Election Tribunal rightly appreciated the evidence and came to the conclusion that third child was born on 8.7.1995. Learned Single Judge also summoned the original record and after examining the record, recorded a finding that he was satisfied that the impugned order does not suffer from any legal infirmity requiring interference by the Court. On the second point, submission of the learned counsel for the appellant was duly considered that Rule 13 of the Rules was similar to Section 101 of the Representation of the People Act, 1950. Therefore, as per the ratio in the decision of the Supreme Court in **Prakash Khandre v. Dr.Vijay Kumar Khandre (1 supra)**, orders would not have been passed declaring Respondent No.2 as duly elected, since there were more than two candidates who had contested the election. Learned Single Judge quoted Rules 12,

13 and 15 of the Rules in the light of the ratio in **Prakash Khandre v. Dr. Vijay Kumar Khandre (1 supra)**, and concluded that when a case falls under Rule 13 of the Rules, the Election Tribunal has no option, but, to declare the election petitioner, who secured majority of the valid votes, as duly elected, and, also held that the purport of Rule 15 of the Rules is the same as was done by the Election Tribunal that after the Election Tribunal has declared the election of the returned candidate as void, it proceeded to declare the election petitioner as duly elected.

We have gone through the order of the learned Single Judge, by which, both the Writ Petitions were dismissed at the admission stage. We have heard the learned counsel for the appellant.

In addition to the two grounds, which were urged before the learned Single Judge, learned counsel for the appellant urged another point that the first proviso to sub-section (3) of Section 19 of the Act says that, in case, third child takes birth within one year from the date of the commencement of the Act, the additional child shall not be taken into consideration for the purpose of sub-section (3), and, no disqualification is incurred by the appellant, and the meaning to be given to the phrase “child born” has to be taken in its right perspective, namely, even the ‘child in womb’. Therefore, assuming that the findings of the Election Tribunal and the learned Single Judge are correct that the child took birth on 8.7.1995, since within one year from the date of commencement of the Act, child was in womb, there would be no question of incurring disqualification. Learned counsel for the appellant relied upon the decision of this Court in **Venkata Chenchayya v. Ramalingam** [2] that under the Hindu Law, a son en ventre sa mere at the time of an alienation by his father is deemed to be in existence as much as a son born before the alienation and has the same right to challenge it. We have given our due consideration to

the submission made by the learned counsel for the appellant and do not agree with the submission made at the Bar that 'child born' would mean even 'child in womb'. Obviously, the purpose of bringing sub-section (3) of Section 19 of the Act on the statute book was to encourage family planning. The Act came into force on 30.5.1994, and, sub-section (3) creates disqualification for a person having more than two children for election or continuing as member in order to safeguard the interests of those candidates who were having two children, and, exemption was given for a period of one year, in case, within one year from the date of the commencement of the Act, third child is born. Such a child will not be taken into consideration for the purpose of contesting the election. Therefore, what is important is the actual date of birth of the child, as the child should have been born within a period of one year from the date of the commencement of the Act, so that such child is not counted while counting the number of children of a person.

We have given due consideration to the submission made by the learned counsel for the appellant on the findings recorded by the Election Tribunal as well as the learned Single Judge as regards the birth of the third child. Same are the arguments addressed before us, which were addressed before the learned Single Judge. As a matter of fact, learned counsel asked us to re-appreciate the evidence. We have gone through the findings of the Election Tribunal and the learned Single Judge. Not only the Election Tribunal rightly appreciated the evidence, learned Single Judge took pains to re-appreciate the evidence and came to the same conclusion and held that there is nothing wrong in the Election Tribunal arriving at the conclusion that the child was born on 8.7.1995. It is interesting to note that the appellant says that third child was born on 16.3.95 and in order

to prove the same, she examined the Doctor of Vijaya Nursing Home and also the Commissioner of Madanapalle Municipality. The record produced in support of such evidence was found to be manipulated. Petitioner earlier was Mandal Parishad Territorial Constituency Member and was duly administered oath and she attended oath-taking ceremony on 18.3.1995. Photographs taken on the occasion of oath ceremony were produced by the election petitioners as Exs. B13 to B16 and the learned Single Judge noticed that even a bare look at the photographs falsifies the case of the petitioner as the petitioner apparently looked like a pregnant woman on 18.3.2004. Firstly record was not produced, except, document under Ex.X20 and entries in Ex.X20 were not based on the register relating to delivery cases. CW-2, Doctor of Vijaya Nursing Home was summoned and asked to produce the register relating to delivery cases. He did not bring any register stating that he did not maintain any such register.

Even on the third point, there is no force in the submission in view of what is stated in Rule 15 of the Rules, which authorizes and empowers the Election Tribunal, on the conclusion of the enquiry, after declaring election of returned candidate as void under Rules 12 and 13, to pass appropriate orders either to declare any other party to the petition who has under the Rules claimed the seat as duly elected, or, order fresh election. Respondent No.2 had made such a prayer, and, obviously, Respondent No.3 had not made such a prayer in the Election Petition, since Respondent No.2 had secured next higher votes in the polling.

We find no substance in the Appeals and have no option, except, to dismiss the same. The Writ Appeals, therefore, are dismissed. No costs.

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DEVINDER GUPTA, C.J.

24.9.2004

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C.V.RAMULU, J.

VR.

To
1.The Election Tribunal -cum- Senior Civil Judge, Punganoor, Chittoor District.
2. The Election Officer -cum- Chief Executive Officer, Zilla Parishad, Chittoor.
3.The Election Officer, Chowdepalle Mandal, Chittoor District.
4. Two CD copies.

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[1] (2002) 5 SCC 568

[2] AIR 1957 A.P. 744